

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Ukiah Main Post Office
Ukiah, California 95482
(Michael E. Sweeney and Save
Ukiah Post Office Committee,
Petitioners)

Docket No. A2011-21

**MOTION OF UNITED STATES POSTAL SERVICE
TO DISMISS PROCEEDINGS**
(July 29, 2011)

This matter commenced with a letter received by the Postal Regulatory Commission that purports to invoke its jurisdiction under 39 U.S.C. § 404(d) to consider an appeal of an alleged Postal Service decision to discontinue the Ukiah Main Post Office.¹ As described in the Postal Service's response to Petitioner's application for suspension,² the Ukiah Main Post Office was relocated; no discontinuance occurred. As the Postal Service has maintained consistently, the scope of section 404(d)(5) is limited to the discontinuance of a Post Office, and does not apply to the relocation of a Post Office. Because Petitioner's appeal concerns the relocation of a Post Office, an event that falls outside the scope of 39 U.S.C. § 404(d)(5), the Commission lacks subject matter jurisdiction and should dismiss the appeal.

¹ Petition for Review of Closure and Consolidation of Ukiah Main Post Office and Application for Suspension of Determination, PRC Docket No. A2011-21 (July 14, 2011).

² Response of United States Postal Service to Petitioner's Application for Suspension of Determination for the Ukiah Main Post Office, Ukiah, California 95482, PRC Docket No. A2011-21 (July 25, 2011) (the "Petition").

PROCEDURAL HISTORY

By means of Order No. 761 (July 18, 2011), the Postal Regulatory Commission (Commission) docketed correspondence from customer Michael E. Sweeney and Save Ukiah Post Office Committee, assigning PRC Docket No. A2011-21 as an appeal pursuant to 39 U.S.C. § 404(d). Petitioner filed an application to suspend the relocation of the Ukiah Main Post Office (the “Application”)³ on July 14, 2011. On July 25, 2011, the Postal Service filed its response to the Application, explaining that Petitioner’s appeal involved a relocation, and not a discontinuance, of the Ukiah Main Post Office.

FACTUAL BACKGROUND

Ukiah is a city located in Mendocino County in the state of California. On June 20, 2011, customers of the Ukiah Main Post Office were informed that the San Francisco District of the United States Postal Service received approval to relocate retail operations from the Ukiah Main Post Office, located at 224 N Oak St., to the Ukiah Carrier Annex, located at 671 South Orchard St. See Petition at 6. Customers of the Ukiah Main Post Office may obtain postal services at the Ukiah Carrier Annex, located within a mile of the Ukiah Main Post Office, and through <http://www.USPS.com/> and other alternate access options, including five stamp consignment sites located within one mile of the Ukiah Main Post Office. See Exhibit 1 (printout from [USPS.com](http://www.USPS.com/)).⁴

³ Petition for Review of Closure and Consolidation of Ukiah Main Post Office and Application for Suspension of Determination, PRC Docket No. A2011-21 (July 14, 2011).

⁴ Exhibit 1 uses the term “Post Office” for retail units staffed by postal employees, thus including stations, branches and Post Offices.

ARGUMENT

This matter raises the question of whether the Postal Regulatory Commission has jurisdiction to consider an appeal of a Post Office relocation. Petitioner's appeal is not within the scope of the Commission's jurisdiction under 39 USC § 404(d). Section 404(d) does not apply to a relocation of operations at a postal retail facility. See Order No. 448, Order Dismissing Appeal, PRC Docket No. A2010-2, *Steamboat Springs, Colorado* (April 27, 2010) (ruling that the transfer of retail operations to a facility within the same community constituted a relocation or rearrangement of facilities, and 39 U.S.C. § 404(d) did not apply); PRC Order No. 696, PRC Docket No. A86-13, *Wellfleet, Massachusetts 02667* (June 10, 1986) (same where new location was 1.2 miles away from the former location); Order No. 436, PRC Docket No. A82-10, *Oceana Station* (June 25, 1982) (same where new location was four miles away from the former location). Section 404(d) provides that an appeal under that section must concern a "closing." See 39 U.S.C. § 404(d). The process for relocating retail operations within the same community is governed by 39 C.F.R. § 241.4. Accordingly, as a matter of law, the relief requested by the Petitioner is not available to Petitioner and should be denied.

In previous cases, the Commission has concluded that a particular action affecting a postal retail facility constitutes relocation exempt from 39 U.S.C. § 404(d) if both the current site and the proposed future site of the retail facility reside in the same community. Where the current site and the proposed future site reside in different communities, the Postal Service's characterization of its

action as a relocation can be rejected. See *Citizens for the Hopkins Post Office v. United States Postal Service*, Civ. No. 3-89-317-0 (D.S.C.) (March 14, 1989) (ruling that 39 U.S.C. § 404(d) applied where the Postal Service proposed the transfer of a Post Office to a separate community).

In 1982, the Commission upheld a Postal Service determination to close the Oceana Station in Virginia Beach as part of an overall plan to rearrange postal retail and delivery operations within the Virginia Beach community. The plan included the future establishment of a new retail facility within Virginia Beach and four miles away from the site of Oceana Station.⁵ Residents served by Oceana Station claimed that the change in retail operations qualified as a discontinuance under 39 U.S.C. § 404(d). In rejecting their claim, the Commission opined that in enacting Section 404(d), “Congress intended to permit the Postal Service to rely on less formal decision-making, and correspondingly, to give the Commission no jurisdiction to hear appeals of such decisions, when considering where retail facilities are to be located within the community.” Order No. 436, PRC Docket No. A82-10, *Oceana Station*, at 7 (June 25, 1982).

Following its decision in *Oceana Station*, the Commission provided further discussion of its approach to relocation while dismissing an appeal of the relocation of the Post Office in Wellfleet, Massachusetts. In that proceeding, the Postal Service had decided to move the Wellfleet Post Office from the center of the village of Wellfleet to a shopping center development approximately 1.2 miles

⁵ The City of Virginia Beach is relatively large at 307 square miles. See http://www.vbgov.com/file_source/dept/comit/Document/vb_facts_and_figures.pdf.

away. The petitioners contended that the new location was actually within the neighboring village of South Wellfleet.⁶ Upholding the Postal Service position and characterizing the Postal Service's action as a relocation outside the scope of Section 404(d), the Commission explained:

If our record shows that the Postal Service is only relocating a [P]ost [O]ffice within a community, section 404([d]) does not apply and we must dismiss the appeal, since we have jurisdiction. Section 404([d]) sets up a formal public decision[-]making process for only two types of actions concerning [P]ost [O]ffices – closing or consolidation. The meaning of “closing a [P]ost [O]ffice” as used in the statute is the elimination of a [P]ost [O]ffice from a community. The Postal Service has the authority to relocate a [P]ost [O]ffice within a community without following the formal section 404([d]) proceedings.

PRC Order No. 696, PRC Docket No. A86-13, *Wellfleet, Massachusetts 02667* (June 10, 1986) at 7 (internal citations omitted).

The Postal Service's transfer of retail operations from the Ukiah Main Post Office resembles the relocation actions described above. Here, the Postal Service is relocating operations within the same community, and the former and future sites reside less than one mile apart. See Postal Service Response to the Application, Exhibit 1.

Petitioner argues that the Postal Service should have followed the procedural requirements of 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3 as part of its decision to relocate the Ukiah Main Post Office. Petition at ¶ 10. But as described above, the Postal Service had no obligation to follow these procedures

⁶ Wellfleet and South Wellfleet are both villages within the Town of Wellfleet, Massachusetts. Given that village boundaries were unclear, the Commission held that Wellfleet involved a relocation rather than a discontinuance.

because its decision concerned a relocation under 39 C.F.R. § 241.4, and not a discontinuance under 39 C.F.R. § 241.3.

This appeal concerns the relocation of a Post Office. Thus, 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3 do not apply. Accordingly, the Commission should dismiss the appeal.

CONCLUSION

The United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this appeal.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
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July 29, 2011

EXHIBIT 1



Alternate Locations to Buy Stamps

Alternate Locations to Buy Stamps near 95482



- | | | | |
|---|---|--------|--|
| 1 | WALGREENS
308 E PERKINS ST
UKIAH, CA 95482-4505 | 0.4 mi | Directions
More info
Nearby Businesses |
| 2 | SAFEWAY
653 S STATE ST
UKIAH, CA 95482-4912 | 0.5 mi | Directions
More info
Nearby Businesses |
| 3 | US BANK
653 S STATE ST
UKIAH, CA 95482-4912 | 0.5 mi | Directions
More info
Nearby Businesses |
| 4 | CVS
155 ORCHARD PLZ
UKIAH, CA 95482-5013 | 0.6 mi | Directions
More info
Nearby Businesses |
| 5 | WELLS FARGO BANK
717 S STATE ST
UKIAH, CA 95482-5815 | 0.6 mi | Directions
More info
Nearby Businesses |

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